40. Opening of a Munsiff-Magistrate's Court at Mallappalli.

Mr. John Eapen (Member, T. I. C., Tiruvalla) also pointed out the urgent necessity for opening a Magistrate-Munsiff's Court for the eastern *pakuthis* of the Tiruvalla taluk, namely, Kallooppara, Ezhumattur, Aiyrur, Koipuram and Thottapuzhacherry and for the Nedumkunnam *pakuthi* of the Changanacherry taluk. He proposed the location of the Court at Mallappalli on the following grounds:—

(1) The distance to Tiruvalla from the above *pakuthis* was greater than to Mallappalli.

(2) There were better means of communication to Mallappalli than to Tiruvalla from the above *pakuthis*.

(3) Crime was on the increase since there was no immediate check.

(4) Where dying declarations were necessary, it would become practically impossible to take such declarations in the majority of cases.

The Member added that there would be sufficient work for the Court, as the average number of cases, both Criminal and Civil, for the past six years would show and that the Government would not suffer financially, as the people were prepared to give the site and even a building.

Dewan's reply.—Noted.

(3) Civil Justice.

41. Suggestions regarding the administration of Civil Justice.

Mr. K. A. Krishna Pattar (Member, Trading Classes, Quilon) spoke about the difficulties experienced by the litigant public in the Civil Courts in the matter of execution of decrees and of the award of interest allowed by the Courts. He suggested the following changes :—

(1) At present warrants of arrest were not being properly executed and the process-server was making use of them for his personal gain with the result that the decree-holder was very often unable to realise his decree-debt. To remedy the evil, the Member suggested that it should be ruled that no warrants should be returned unexecuted without the attestation of the decree-holder and that the production of the debtor or of an endorsement from the decree-holder about the satisfaction of decree should be insisted upon in respect of 75 per cent of the warrants entrusted to a process-server. He also suggested that no process-server should be allowed to continue in the same Court for a long time.

(2) Another difficulty in connection with the execution of decrees arose from the inactivity of the Courts in cases of escape from custody of debtors while under *Mohasul*. Beyond passing an order to prosecute the defendant, the Courts did not take any further step. That encouraged many debtors in their attempt to avoid payment of the decree-debt. The Civil Courts should be authorised to try such cases and punish the delinquents.

(3) In connection with the transfer of decrees for execution from one Court to another, the parties were experiencing great difficulties for want of correct information from the Courts and owing to their failure to send them to the right Courts. If the parties themselves were permitted to produce the decree and the certificate before the Courts where they desired to execute it, or, if they were given endorsements to the effect that the decree had been transferred to a particular Court, it would be a great relief to the parties who had now to wait at the Court for information and undergo unnecessary trouble and expense in getting their decrees re-transferred to the Courts which passed them and for again applying for the transfer of the decrees to the Courts where they were to be executed.

(4) When applications for correction of decrees were made either on account of some omission or error, caused by negligence in the preparation of the decrees, notice of the same had to be given to the opposite party. But the expenses incurred in connection with the application were not included in the decree. That was a grievance to the parties and should be removed

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(5) The law obtaining in the British Indian Courts regarding the award of interest was not being followed in Travancore. In British India, decrees were given for the award of interest according to the agreement of the parties. The absence of such a provision was a grievance to the litigants.

Mr. Narayanar Janardanar (Member, Jenmi, Trivandrum Division) said that the difficulties experienced by the litigant public in the Civil Courts and through Vakils and their clients were manifold.

Firstly, the *vakalaths* authorised the Vakils to depute other Vakils to conduct the cases when the former were not able to do so. It often happened that, when any particular case was called up, the Vakil was engaged in arguing a case in another bench and that he had deputed another Vakil to conduct the first mentioned case. The latter conducted the case unsatisfactorily, as he had no previous preparation; and the result was ruinous to the interests of the client. If the case were decided against him in consequence, his position would be worse than if the case were struck off the file for non-appearence of the Vakil. For, in the latter case, he could put in a review under section 203 of the Civil Procedure Code. The Member, therefore, prayed that the sections in the Vakils' Regulation permitting Vakils to authorise other Vakils to conduct their cases might be deleted.

Secondly, the conduct of the Vakils' clerks in handling the money entrusted to them by the clients at different stages of a case was unsatisfactory. The clerks generally demanded, and received from the clients, money in excess of the actual requirements and pocketed to themselves any surplus that remained. No satisfactory accounts were being kept and the Vakils' Account Books showed only particulars of the actual amounts spent in connection with the case. To remedy the evils complained above, the Member's suggestion was that each time a client paid money to Vakils' clerks, a receipt signed by the Vakil's senior clerk and attested by the Vakil should be granted to the client, that the receipt should be in duplicate and that the amounts should be entered in the Vakil's Day Book and Ledger. In the alternative, the Courts might be required to periodically examine the accounts and ledgers of Vakils and thus exercise a sort of wholesome supervision and check.

The third difficulty referred to by the Member was about the unsatisfactory way in which processes were being served on parties. The peons who were entrusted with the processes to be served returned them unserved on the plea that the parties were not to be seen. In some instances, the return of processes was effected within the Court premises, without even making an attempt to trace out the parties. Such a state of affairs was unsatisfactory. The Member, therefore, prayed that summonses be sent directly to the parties concerned in closed covers through Anchal without any superscription as to the nature of the contents or that persons entrusted with the processes be insisted on serving at least 95% of the processes personally.

The fourth and last point mentioned by the Member was about the appointment of Commissioners by the Courts. Some of the Commissioners thus appointed were incompetent to carry out the commission orders properly. The valuation of trees, etc., by such Commissioners was not at all satisfactory and their reports disclosed their complete ignorance in such matters. The Commissioners appointed by the Court were not generally objected to by the Vakils. Even if objections were raised to the appointment of interested persons as Commissioners, such objections were not of much avail in many cases. The Member, therefore, suggested that paid Commissioners should be appointed in the Courts by the Government, as the average receipts under that head were about Rs. 500 per mensem.

Mr. C. A. Nediry (Member, Ambalapuzha taluk) said that the first point in his representation was the long delay in the disposal of cases in the Civil Courts. He then went into the various items of delay in the Courts. In his opinion, the two causes for the delay were (1) the existence of many old cases which had to be disposed of, before new cases were taken up and (2) the Judges and the Munsiffs not strictly following the procedure prescribed in the Civil Procedure Code for the examination of

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witnesses. He explained the existing practice of examining witnesses in a case posted for hearing and requested that instructions might be issued so that the Court might follow strictly the provisions of the proviso to section 151 of the Code, which required that the hearing of a suit should be continued from day to day until all the witnesses in attendance were examined. The system was working well enough in Sessions cases and so there was no reason why it should be unworkable in Civil cases. He suggested the desirability of experimenting the procedure in one or two Courts. In regard to the delay in the disposal of cases, the remedy proposed by the Member was the appointment, for a period of one year, of as many temporary Munsiffs and Judges as there were permanent officers at present to dispose of old cases alone, the work of the latter being confined to the disposal of new cases. The additional cost entailed could be met from the Judicial revenue.

(2) The next point was the existence of irregularities in the copying department in Civil Courts. The Member described the nature of the avoidable delay in finishing attested copies of Court records and made the following suggestions to minimise the delay :—

(*a*) The probable number of sheets required for a copy should be shown in the application and produced with it. The Examiner should receive the sheets and fix a day immediately for the delivery of the copy. The date fixed should not be more than 20 or 25 days for decrees and judgments not signed, and 2 or 3 days, for other records.

(*b*) If the papers produced be found to be not enough, a notice should be put up on the day fixed for delivery of copy, showing the additional quantity of paper required and also the date on which the copy would be delivered. On the latter date, the copy should be delivered.

(*c*) The custodians of the records should send them to the Examiner the same day the application was made.

(*d*) The Head Clerk should supervise the working of the system daily.

(3) The Member then complained that the prescribed number of words in a page, *viz.*, 175, were not being copied. The Examiner and the Head Clerk should be required to check the number of words in one or two pages every day. The unused sheets of paper should also be required to be sent by the Examiner to the Head Clerk daily and the latter should return them to the parties.

(4) The difficulty in getting copies of public records for judicial purposes was then dealt with by the Member. He requested that the Government should make arrangements to give copies of all records, even of those unfavourable to Government, without enquiring for what purpose the copies were required.

(5) The Member then pleaded for the cancellation of the High Court Circular which required that copies of decrees should be filed with the execution petitions. The copies were unnecessary, because the original decrees were in the Courts. The Circular brought on the parties unnecessary loss in the shape of Court-fees stamp, which had to be affixed to each copy.

(6) In the old Civil Procedure Code, there was a provision which required that copies should be filed with original documents. The revised Code did not contain the provision and it required a copy being filed only when a document was withdrawn before the disposal of the case. The existing practice, requiring the production of copies, should, therefore, be discontinued.

(7) There was considerable delay in returning records from the appellate to the original courts. To minimise the delay, the submission of a monthly return showing the delay in each case should be insisted on.

(8) When the sale of immovable properties was adjourned to a date without a fresh proclamation with the consent of parties, a process fee of 10 chs. alone used to be levied for that day. But the High Court, by a Circular issued about three years ago, had ruled that 10 chs. a day should be realized when the sale was

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adjourned from day to day and that the whole process fee for a fresh sale should be realised in all other cases. As no greater expenditure than 10 chs. was necessary in the case of the sale on a distant date, he suggested that the old practice be restored.

(9) Petitions for the return of documents produced by parties after the disposal of suits were taxed with a fee of half a rupee. As they were being presented after the decree, the fee paid for the same would not be included in the cost of the suit. But the petitions of witnesses to return the documents produced by them were not taxed. Hence, the practice of realising fees for such petitions from parties should be discontinued and a memo without any fee should be declared sufficient in such cases.

(10) The practice of producing copies of judgments and decrees of both the lower Courts when a special appeal was presented originated in a special provision of the old Civil Procedure Code. But that provision was taken away in the new Code. The present Code only enjoined that the copy of the decree and the judgment against which the appeal was made should be produced. Hence, in special appeals, the appeal being against the decree of the appellate Court, the copies of the appeal decree and judgment alone should be required to be produced with the appeal memo and the present practice of insisting on copies of decrees and judgments of the Munsiffs in special appeals should be stopped.

(11) The Circular of the High Court that a review petition should be accompanied by copies of decree and judgment was not right. When a review petition was presented in a Court, the decree and the judgment being already in that Court, the Code did not require that copies of the judgment and decree should be produced with the petition. It was unnecessary to produce a copy when the original itself was in the Court. The British Indian High Courts had ruled that the review petition need not be accompanied by the said copies. The Court had no power to order a party to do a thing which the Regulation did not require. Further, the production of such copies was useless and caused unnecessary trouble and expense to the parties. Hence, the said Circular should be cancelled.

Dewan's reply.—The representations of the Members will be referred to the High Court.

42. Suggestions for redressing the grievances of the litigant public with special reference to the shifting of one of the two Munsiff's Courts at Nagercoil to Bhutapandi.

Mr. K. M. Sivathanu Pillai (Member, Tovala taluk) made the following suggestions with a view to redress the grievances of the litigant public:—

(1) Several items of business were carried on in the Courts every day such as examination of witnesses, writing judgments, hearing cases, conducting auctions, etc. That retarded the progress of work under all the heads. It should be made a rule that examination of witnesses and conducting auctions should take place on 4 days in the week, the remaining 2 days being assigned for hearing cases and writing judgments.

(2) At present, cases were being decided against parties who failed to appear at the first enquiry. If the parties appeared and petitioned the Court, such cases were again admitted. That procedure should be put a stop to. If a party should fail to appear at the first enquiry, it should be ordered that the case would go against that party, if he failed to appear at the next enquiry. If he should fail to appear on the second occasion also, the case should be decided against him and it should not be admitted again, unless the party showed sufficient cause for non-appearance.

(3) The present system of arresting debtors for realising decree-debts was not satisfactory. It should be laid down as a rule that either the decree-debt or the debtor should be produced before the Court on a specified day, that the warrant should be served on the debtor and duly attested by a responsible officer of the Government, that, if the debtor did not appear on the specified day, he should be held criminally liable or liable to be arrested by a second warrant and that, when the

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